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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EUGENE LUMLEY,	:	ECF
Individually and on Behalf of All Other Persons	:	08 CV 3993 (TPG) (AJP)
Similarly Situated,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
UNITED STATES TRUST COMPANY, N.A.,	:	
BANK OF AMERICA, N.A. and	:	
JOHN DOES #1-10, Jointly and Severally,	:	
	:	
Defendants.	:	
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DECLARATION OF EUGENE LUMLEY

**IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF
COLLECTIVE ACTION NOTICE**

DECLARATION OF EUGENE LUMLEY

I, **EUGENE LUMLEY**, hereby declare under penalty of perjury that the following is true:

1. I was a First Level Officer employee of United States Trust Company and Bank of America (together “Defendants”) employed from on or about January 2007 until October 2007 (the “time period”). My title was also referred to as “Financial Officer.” Herein, the term, “First Level Officer”, will include the title of “Financial Officer.”

2. I worked for Defendants at 114 West 47th Street, 3rd Floor, New York, New York 10036.

3. I worked predominantly preparing individual tax returns using software named “Pro Systems” and preparing household employee payroll tax returns using software named “1099-Etc”.

4. While working for Defendants, I never saw any notice informing me and the other employees of our right to be paid overtime at a rate of time and one half our regular hours for hours worked over forty in a week.

5. During the time period during which I worked for Defendants, during many weeks, I worked over 40 hours a week. During the approximately 8 week period prior to April 15, 2007 and the six week period prior to October 15, 2007, I often worked from about 9:00 a.m. or 9:30 a.m. to about 8:00 p.m. or 8:30 p.m. and sometimes as late as 10:00 p.m., and also worked a number of Saturdays from about 9:30 a.m. to 3:30 p.m. and sometimes as late as 6:00 p.m.

6. When I worked on Saturdays, I was required to sign into the building and sign out of the building (listing the time next to my name) in a sign-in/sign-out book located in the lobby at the security desk.

7. While I worked at Defendants, Defendants paid me an annual salary at the rate of \$62,000 per year, but failed, refused and neglected to pay me any statutory overtime wages for hours worked in excess of 40 hours per week.

8. In addition to myself, during the time period, I am aware and have personal knowledge of other persons employed by Defendants as First Level Officers or similar titles who performed the same or similar work as myself. Upon information and belief there are at least 40 of such similar First Level Officers.

9. I and the other similar First Level Officer employees regularly worked more than 40 hours per week for Defendants.

10. I and these other similar First Level Officers employees worked more than 40 hours per week and were paid their regular hourly rate for overtime and were not paid time and one half for their overtime hours.

11. I know that others like me were not paid overtime by Defendants because the human resources Vice President named Jeannie Mongiello informed me that First Level Officers were categorized as exempt for time and one half purposes and therefore were not paid time and one half for work performed over forty hours in a workweek. I know that other First Level Officers worked more than 40 hours in a workweek because I worked alongside some of the First Level Officer employees and witnessed the hours that they worked.

12. On or about September 30, 2007, Defendants ceased designating the First Level Officer position as an exempt position for overtime purposes and commenced paying First Level Officers time and one half for their overtime hours.

13. Throughout the time period that I worked at Defendants, and, upon information and belief, both before that time and continuing until about September 30, 2007 (when Defendants ceased designating first level officers as exempt), Defendants have likewise employed other individuals, like myself, in positions as First Level Officer workers.

14. Such individuals have worked in excess of 40 hours a week, yet the Defendants have likewise willfully failed to pay them overtime compensation of one and one-half times their regular hourly rate for hours worked in excess of 40 hours per week.

Dated: April 22, 2008



EUGENE LUMLEY